

No. 11689

United States
Circuit Court of Appeals
For the Ninth Circuit

WESTERN UNION TELEGRAPH COMPANY,
a corporation,

Appellant,

vs.

HANSEN & ROWLAND CORPORATION,
a corporation,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Southern Division

FILED

AUG 23 1947

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

MESSRS. MERRITT, SUMMERS & BUCEY,

LANE SUMMERS, ESQ.,

Central Building,

Seattle, Washington,

Attorneys for Appellants.

MESSRS. PETERSON & DUNCAN,

CHARLES T. PETERSON, ESQ.,

WENDELL W. DUNCAN, ESQ.,

Perkins Building,

Tacoma, Washington,

Attorneys for Appellees.

In the Superior Court of the State of Washington
in and for the County of Pierce

No. 99059

HANSEN & ROWLAND CORPORATION,
a corporation,

Plaintiff,

vs.

THE WESTERN UNION TELEGRAPH COM-
PANY, a corporation,

Defendant.

COMPLAINT

Comes now plaintiff and complaining of defendant says:

I.

Plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Washington, and has paid its annual license fee for the year last past due.

II.

That defendant is a corporation organized and existing under and by virtue of the laws of the State of New York, and is and at the times herein mentioned was engaged in doing business in the State of Washington.

III.

That on the 2nd day of December, 1932, Premier Investment Company, a corporation, was the owner and in possession of Lot Four (4), Block One Thousand Three (1003), Map of New Tacoma, W. T., in Pierce County, Washington, commonly known as House No. 1007 Pacific Avenue in the City of Tacoma, Washington, and on said date entered into a lease in writing with defendant, The Western Union Telegraph Company, extending over a period of six years beginning on November 1st, 1932 and ending on the 31st day of October, 1938; that said lease contained among others the following provision:

“Unless either party hereto shall give to the other at least three months prior to the end of said term written notice of his or its desire and intent to terminate this lease at the end of said term, this lease shall continue upon the terms and conditions then in force for a further period of one year and so on from year to year until terminated by either party hereto giving to the other written notice at least three months prior to the expiration of the then current term of his or its desire and intent to terminate this lease at the end of said term.”

That during the month of May, 1938, said lease was extended by agreement in writing for a period of three years from the 1st day of November, 1938, by Western Union Realty Corporation, the then owner of said premises, and defendant; that the

provision above set forth in the original lease was by said agreement continued in force and thereafter on February 27th, 1941, was again extended by agreement in writing between Western Union Realty Corporation and defendant for the additional period of five years, beginning on the 1st day of November, 1941 and ending on the 1st day of November, 1946, and that said provision above set forth was by the said agreement in writing incorporated in said extension agreement and made a part thereof;

IV.

That subsequent to the making of said agreement last referred to and prior to July 24, 1946, plaintiff, Hansen & Rowland Corporation, acquired the legal title to and became the owner of said real property and premises, subject to the terms, provisions and conditions of said original lease made in 1932, and the written agreement last above referred to, extending the same, and is the owner of said real property and premises.

V.

That on July 24th, 1946, plaintiff made and delivered to defendant a notice in writing terminating defendant's right to occupy said premises from and after October 31st, 1946, a copy of which said notice is attached hereto, marked Exhibit "A" and made a part of this complaint by reference.

VI.

That on September 27th, 1946, plaintiff caused a notice in writing to be personally served on defend-

ant, notifying it to vacate and surrender up the premises to the owners thereof at the expiration of its tenancy on the 1st day of November, 1946, a copy of which said notice is attached hereto, marked Exhibit "B" and made a part of this complaint by reference.

VII.

That thereafter, on October 8th, 1946, defendant advised plaintiff orally that it desired to continue in possession of said premises after October 31st, 1946, following the expiration of its said lease as extended, whereupon plaintiff notified defendant in writing, that defendant would be permitted to remain in possession of said premises for a period not exceeding four months at a monthly rental of \$1500.00 per month, a copy of which said notice is attached hereto, marked Exhibit "C" and made a part of this complaint by reference.

VIII.

That on October 30th, 1946, defendant tendered to plaintiff as rental for said premises for the month of November, 1946, the sum of \$750.00, and notified plaintiff that it would not vacate and surrender up said premises, a copy of which said notice is attached hereto, marked Exhibit "D" and made a part of this complaint by reference.

IX.

That on November 2nd, 1946, plaintiff notified defendant in writing to pay the sum of \$1500.00 rent for said premises which became due and pay-

able on the 1st day of November, 1946, within three days after service of notice thereof, or in the alternative, to quit, vacate and surrender up the possession of said premises to plaintiff, the owner thereof, a copy of which said notice is attached hereto, marked Exhibit "E" and made a part of this complaint by reference; that defendant has failed, refused and neglected to vacate and surrender up the possession of said premises to plaintiff;

X.

That plaintiff is and for many years last past has been engaged in doing general insurance business, maintaining a general office at Tacoma, Washington, and among others, a branch office at Seattle, Washington, and at the present time and for some time past has employed a number of employees to carry on the different departments of its business, including a casualty department, and because of inability to obtain adequate office space within the City of Tacoma in which to carry on its business, it has been required and compelled to transfer the casualty department of its business from its general offices at Tacoma, Washington, to an office at Seattle, Washington, and compelled to incur unusual and unnecessary expense in that connection; that it could and would except for defendant's wrongful withholding and detaining possession of said premises maintain said casualty department at Tacoma, Washington, in the premises occupied by defendant and thereby save unnecessary expendi-

tures amounting to more than \$31.00 per day over and above the rental value of said premises, a statement of which said added unnecessary expenses is attached hereto, marked Exhibit "F" and made a part of this complaint by reference; that defendant long prior to its wrongful refusal to vacate and surrender up said premises was fully informed and knew that in case it wrongfully withheld and detained said premises from plaintiffs, that plaintiff would sustain such loss.

XI.

That in addition thereto, plaintiff has been damaged by defendant by failure to pay said rental at the rate of \$1500.00 per month in the amount of \$50.00 per day from and after November 1st, 1946, by reason of all of which plaintiff has sustained a loss of \$82.00 per day since November 1st, 1946, by reason of defendant's wrongful detention of said premises and will continue to sustain such amount of loss per day as long as defendant wrongfully withholds and detains possession of said premises.

Wherefore, plaintiff prays that it may have and recover possession of said premises from defendant, and that defendant be ousted therefrom, and that plaintiff have judgment against defendant for double the amount of the special damages, \$32.00 per day sustained by it from and including November 1st, 1946, until defendant surrenders up or is ousted from said premises, and for the further sum of \$100.00 per day, daily, being double the amount of the rent agreed to be paid for said premises from

and including November 1st, 1946, until defendant surrenders up said premises to plaintiff or is ousted therefrom, and that plaintiff have and recover its costs and disbursements herein.

PETERSON & DUNCAN,
Attorneys for Plaintiff.

State of Washington,
County of Pierce—ss.

Charles T. Peterson, being first duly sworn, on oath deposes and says:

That he is the attorney for Hansen & Rowland Corporation, a corporation, the plaintiff in the above entitled action, and makes this verification for and on its behalf; that all the material allegations set forth in the foregoing complaint are within his personal knowledge and that he has read the foregoing complaint, knows the contents thereof and the same is true as he verily believes.

CHARLES T. PETERSON.

Subscribed and sworn to before me this 9th day of November, 1946.

WENDELL W. DUNCAN,
Notary Public in and for the State of Washington,
residing at Tacoma.

[Endorsed]: Filed in County Clerk's Office,
Pierce County, Wash., Nov. 9, 1946. Josephine R.
Melton, Clerk. By C. I., Deputy.

EXHIBIT "F"

Unnecessary Expenses

3 additional stenographers at a combined salary of \$450.00 per month	\$450.00
Additional private telephone line from Seattle to Tacoma, per month	170.63
Temporary office equipment, Seattle	36.00
Salary and loss of time Casualty Department	150.00
Addition traveling expenses between Seattle and Tacoma because of transfer of Cas- ualty Department to Seattle, Washington	150.00
<hr/>	
Total per month	\$956.63

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 28, 1946. Millard P. Thomas, Clerk; By E. R., Deputy.

In the Superior Court of the State of Washington
in and for the County of Pierce

No. 99059

HANSEN & ROWLAND CORPORATION,
a corporation,

Plaintiff,

vs.

THE WESTERN UNION TELEGRAPH COM-
PANY, a corporation,

Defendant.

SUMMONS

The State of Washington to The Western Union
Telegraph Company, Defendant:

You Are Hereby Summoned to appear on the
18th day of November, A. D. 1946, and defend the
above entitled action in the court aforesaid, and
in case of your failure so to do, judgment will be
rendered against you according to the demand of
the complaint which has been filed with the Clerk
of said Court, a copy of which is herewith served
upon you.

PETERSON & DUNCAN,
Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 9, 1946.

[Endorsed]: Filed in United States District
Court, Western District of Washington, Southern
Division, Dec. 28, 1946. Millard P. Thomas, Clerk.
By E. R., Deputy.

[Title of Superior Court and Cause.]

MOTION TO QUASH SUMMONS

The defendant above named (not appearing generally but appearing specially and solely for the purpose of this motion) moves for order quashing purported summons as issued and served by and for the plaintiff above named, upon the ground that said summons, not complying with the requirements of R.R.S. sec. 818 either in form or in substance, is insufficient and invalid to subject said defendant to the jurisdiction of the above entitled court in the above entitled action.

This motion is based upon the attached supporting affidavit, which by this reference is made a part hereof.

MERRITT, SUMMERS &
BUCEY,
LANE SUMMERS,

Attorneys for defendant above named, specially
appearing.

State of Washington,
County of King—ss.

Lane Summers, being first duly sworn, upon oath
deposes and says:

That he is a member of the firm of Merritt, Summers & Bucey and as such one of the attorneys for the Western Union Telegraph Company, a corporation, defendant above named, which is appearing not generally but specially for the purpose of the foregoing motion only.

That he has been furnished with the copy of summons in the above entitled action as prepared and issued by and for the plaintiff above named and as served upon the defendant above named, a true, full and complete copy of which same is incorporated as Exhibit A. That he has been reliably advised, and hence believes, that there has been served upon said defendant in the above entitled action no other summons or copy thereof.

That the only summons issued by said plaintiff and served upon said defendant fails to comply with R.R.S. sec. 818, prescribing the requirements of summons in unlawful detainer actions.

LANE SUMMERS.

Subscribed and sworn to before me this 14th day of November, 1946.

[Seal]

W. H. HAYDEN,

Notary Public in and for the State of Washington,
residing at Seattle.

Copy received Nov. 16, 1946.

PETERSON & DUNCAN,

Attorneys for Plaintiff. (R.V.P.)

[Endorsed]: Filed Nov. 16, 1946.

[Endorsed]: Filed in United States District Court, Western District of Washington, Southern Division, Dec. 28, 1946. Millard P. Thomas, Clerk. By E. R., Deputy.

In the Superior Court of the State of Washington
in and for the County of Pierce

No. 99059

HANSEN & ROWLAND CORPORATION,
a corporation,

Plaintiff,

vs.

THE WESTERN UNION TELEGRAPH COM-
PANY, a corporation,

Defendant.

ALIAS SUMMONS

The State of Washington to The Western Union
Telegraph Company, Defendant:

You Are Hereby Summoned to appear on the
30th day of November, 1946, and defend the above
entitled action in the court aforesaid, and in case
of your failure so to do, judgment will be rendered
against you according to the demand of the com-
plaint, the original of which has been filed with the
Clerk of said court, a copy of which is herewith
attached and served upon you.

You Are Further Notified that this is an action
of unlawful detainer, and that the relief sought in
this action is to recover possession of the premises
hereinafter described for judgment for twice the
amount of rent due and of the damages that have
been and will be occasioned to the plaintiff by and

during your unlawful detention of the said premises. That the said premises in question are described as follows:

Lot Four (4), Block One Thousand Three (1003) Map of New Tacoma, W. T., Pierce County, Washington, commonly known as House No. 1007 Pacific Avenue in the City of Tacoma, Washington.

PETERSON & DUNCAN,
Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 23, 1946.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 28, 1946. Millard P. Thomas, Clerk
By E. R., Deputy.

[Title of Superior Court and Cause.]

PETITION FOR REMOVAL

To the Above Entitled Court and the Honorable
Judges Thereof:

The petition of The Western Union Telegraph Company, a corporation, sole defendant above named, respectfully shows:

I.

That the above entitled action, being a suit of a civil nature at law, of which the District Court of the United States for the Western District of

Washington, Southern Division, is given original jurisdiction, has been instituted and is now pending without trial and wholly undetermined in the above entitled court; that the action was commenced by Hansen & Rowland Corporation, a corporation, plaintiff above named, by service of alias summons (copy of which is incorporated as Exhibit A) and complaint upon the 23rd day of November, 1946, and not upon any prior date; and that the time at and before which said defendant is required by the laws of the State of Washington (specially applicable) or by the rules of the above entitled court to plead or answer to said complaint of said plaintiff has not expired, and that by such rules and such laws said defendant is allowed so to plead or answer at any time up to and including the 30th day of November, 1946.

II.

That the above entitled action, as disclosed by said complaint, makes claim and demand for double the amount of alleged rent and alleged damages, which aggregate upon the date hereof more than \$3000.00, exclusive of all interest and costs; that said defendant denies liability to said plaintiff upon its claim and demand as alleged in said complaint; and that the matter in controversy, exclusive of all interest and costs, exceeds the sum of \$3000.00.

III.

That said plaintiff always has been, and now is, a corporation organized and existing under and by virtue of the laws of the State of Washington, and

hence always has been, and now is, a citizen and resident of the State of Washington and of no other state whatsoever. That said defendant always has been, and now is, a corporation organized and existing under and by virtue of the laws of the State of New York, and hence always has been, and now is, a citizen and resident of the State of New York and of no other state whatsoever.

IV.

That said defendant is filing herewith its bond heretofore executed by it, with good and sufficient surety thereon, conditioned for said defendant entering in said District Court of the United States for the Western District of Washington, Southern Division, within thirty days from date of filing its petition for removal, a certified copy of the record in the above entitled action, and for its paying all costs that may be awarded by said District Court, if it shall hold that said action was wrongfully or improperly removed thereto.

V.

That written notice of this petition, of said bond for removal, and of said defendant's intention to file the same, together with a copy of said petition and of said bond, was given to and served upon said plaintiff, the adverse party in said action, prior to the filing of this petition and of said bond.

VI.

That the above entitled action is a controversy wholly between citizens and residents of different states.

VII.

That by reason of the premises, said defendant is entitled to have said matter removed from the above entitled Superior Court of the State of Washington, in and for the County of Pierce, unto the District Court of the United States for the Western District of Washington, Southern Division, holding terms at the City of Tacoma, in said County of Pierce, State of Washington, such being the District Court of the United States in the district where the above entitled action is pending.

MERRITT, SUMMERS &
BUCEY,

LANE SUMMERS,

Attorneys for Petitioner.

State of Washington,
County of King—ss.

Lane Summers, being first duly sworn, upon oath deposes and says:

That he is an attorney at law and a member of the firm of Merritt, Summers & Bucey, and as such one of the attorneys of record for The Western Union Telegraph Company, defendant above named, which is a non-resident corporation having no officer within the State of Washington; that all the material allegations of the foregoing petition are within his knowledge; that he makes this verification in behalf of said defendant for said reasons,

with authority so to do; that he has prepared and read said petition, which is true.

LANE SUMMERS.

Subscribed and sworn to before me this 30th day of November, 1946.

[Seal] W. H. HAYDEN,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed Nov. 30, 1946.

EXHIBIT "A"

In the Superior Court of the State of Washington
in and for the County of Pierce

No. 99059

HANSEN & ROWLAND CORPORATION,
a corporation,

Plaintiff,

vs.

THE WESTERN UNION TELEGRAPH COM-
PANY, a corporation,

Defendant.

ALIAS SUMMONS

The State of Washington to The Western Union
Telegraph Company, Defendant:

You Are Hereby Summoned to appear on the
30th day of November, 1946, and defend the above

entitled action in the Court aforesaid, and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, the original of which has been filed with the Clerk of said court, a copy of which is herewith attached and served upon you.

You Are Further Notified that this is an action of unlawful detainer, and that the relief sought in this action is to recover possession of the premises hereinafter described for judgment for twice the amount of rent due and of the damages that have been and will be occasioned to the plaintiff by and during your unlawful detention of the said premises. That the said premises in question are described as follows:

Lot Four (4), Block One Thousand Three (1003) Map of New Tacoma, W. T., Pierce County, Washington, commonly known as House No. 1007 Pacific Avenue in the City of Tacoma, Washington.

PETERSON & DUNCAN,
Attorneys for Plaintiff.

Office & P.O. Address:

520 Perkins Building
Tacoma 2, Washington

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 28, 1946. Millard P. Thomas, Clerk. By E. R., Deputy.

[Title of Superior Court and Cause.]

ORDER OF REMOVAL

The above entitled action having come regularly on for hearing before the above entitled court, the undersigned Judge presiding, this day, upon petition and bond of the defendant above named for an order transferring and removing this cause to the District Court of the United States for the Western District of Washington, Southern Division; and it appearing to the court that the defendant has filed its duly verified petition for such removal in the form required by law, and that the defendant has filed therewith its bond on removal duly and properly conditioned with good and sufficient surety for an adequate amount as provided by law, and that prior to filing said petition and said bond the said defendant had given due and legal notice thereof, of its intention to file the same, and of the time and place of presenting the same for this order, to the plaintiff above named; and it appearing to the court from an examination of the record in the above entitled action and of said petition, bond and notice, that this is a proper cause for removal to said District Court, upon the ground of diversity of citizenship and residence between the plaintiff and defendant;

Now, Therefore, said petition and bond are hereby approved and accepted, and it is hereby Ordered and Adjudged that all further proceedings in the above entitled action be, and the same hereby are, stayed, that the above entitled action be, and the same hereby is, removed to the District Court

of the United States for the Western District of Washington, Southern Division, holding terms in the City of Tacoma, Pierce County, State of Washington, and the Clerk of this Court is hereby directed to prepare and certify a true and complete transcript of the record in the above entitled action for transmission forthwith to said District Court.

Done in open court this 3rd day of December, 1946.

F. G. REMANN,
Judge.

Presented by:

CHARLES B. HOWARD,
Of Attorneys for Defendant.

Copy received Nov. 30, 1946.

PETERSON & DUNCAN,
Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 3, 1946. Ent. Jour. 288,
page 363.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 28, 1946. Millard P. Thomas, Clerk. By E. R., Deputy.

[Title of Superior Court and Cause.]

BOND ON REMOVAL

Know All Persons by These Presents:

That we, The Western Union Telegraph Company, a New York corporation, defendant above

named, as Principal, and American Surety Company of New York, as Surety, being a corporation authorized to transact business within the State of Washington, are held and firmly bound unto Hansen & Rowland Corporation, a corporation, plaintiff above named, in the sum of Five Hundred Dollars (\$500.00) lawful money of the United States, for the payment of which well and truly to be made, we, and each of us, bind ourselves, our successors and assigns, jointly and severally by these presents.

Whereas, The Western Union Telegraph Company, a New York corporation, defendant above named, is applying by petition to the Superior Court of the State of Washington for the County of Pierce for the removal of a certain action therein pending, wherein Hansen & Rowland Corporation, above named, is plaintiff, and The Western Union Telegraph Company, a New York corporation, above named, is defendant, to the District Court of the United States for the Western District of Washington, Southern Division, for further proceedings, upon the grounds set forth in said petition, and for stay of all further proceedings in said action in said Superior Court.

Now, Therefore, if The Western Union Telegraph Company, a New York corporation, shall enter in said District Court of the United States for the Western District of Washington, Southern Division, within thirty days from the date of filing said petition, a certified copy of the record in said action, and shall pay, or cause to be paid, all costs

that may be awarded therein by said District Court of the United States for the Western District of Washington, Southern Division, if said court shall hold said action was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise it shall remain in full force.

Dated this 30th day of November, 1946.

Principal:

THE WESTERN UNION
TELEGRAPH COMPANY,
a New York corporation.

By MERRITT, SUMMERS &
BUCEY,
Its Attorneys.

Surety:

AMERICAN SURETY
COMPANY OF NEW YORK.

[Seal] By K. F. WARRACK,
As Its Resident
Vice-President

Attest:

B. L. LEASURE,
Resident Assistant Secretary.

[Endorsed]: Filed Nov. 30, 1946. Ent. Bond U,
page 290.

[Endorsed]: Filed in the United States District
Court, Western District of Washington, Southern
Division, Dec. 28, 1946. Millard P. Thomas, Clerk.
By E. R., Deputy.

[Title of Superior Court and Cause.]

NOTICE OF FILING PETITION AND BOND
FOR REMOVAL; PROOF OF SERVICE

To Hansen & Rowland Corporation, Plaintiff above-named, and to Peterson & Duncan, Its Attorneys:

You, and each of you, will please take notice that the Western Union Telegraph Company, a New York corporation, defendant above-named, is about to file with the Clerk of the above-entitled Court its petition and bond for removal of the above-entitled action from said Court to the District Court of the United States for the Western District of Washington, Southern Division, copy of which said petition and said bond for removal is herewith served upon you and by this reference made a part hereof; and that said defendant will present said petition and bond for removal, together with the record in the above-entitled action, if any, to the above-entitled Court, sitting within the County Court House, City of Tacoma, County of Pierce, State of Washington, upon the 5th day of December, 1946, at the hour of 10 a.m., or as soon thereafter as hearing may be had, at which time and place said defendant, through the undersigned, its attorneys, will apply for order staying further proceedings in the above-entitled Court and granting such removal of said action, and directing certified transcript of the record herein to be prepared as provided by law.

Dated at Seattle, Washington, this 30th day of November, 1946.

MERRITT, SUMMERS &
BUCEY,

LANE SUMMERS,

Attorneys for The Western Union Telegraph
Company, Defendant above named.

Service on this 30th day of November, 1946, of copy of the foregoing Notice, together with copy of said petition and of said bond for removal therein mentioned, prior to the filing of the originals thereof, is hereby acknowledged.

PETERSON & DUNCAN,
Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 30, 1946.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 28, 1946. Millard P. Thomas, Clerk. By E.R., Deputy Clerk.

In the United States District Court for the Western
District of Washington, Southern Division

No 987

HANSEN & ROWLAND CORPORATION, a
Corporation,

Plaintiff,

vs.

THE WESTERN UNION TELEGRAPH COM-
PANY, a Corporation,

Defendant.

NOTICE OF REMOVAL

To Hansen & Rowland Corporation, Plaintiff above-
named, and to Peterson & Duncan, Its Attor-
neys:

You and each of you will please take notice that on the 3rd day of December, 1946, the above-entitled action was duly removed and transferred from the Superior Court of the State of Washington, for the County of Pierce, to the District Court of the United States for the Western District of Washington, Southern Division, and that transcript of record in said action was upon the 28th day of December, 1946, duly filed in said District Court of the United

States for the Western District of Washington,
Southern Division.

Dated this 28th day of December, 1946.

MERRITT, SUMMERS &
BUCEY,

LANE SUMMERS,

Attorneys for Defendant.

Copy rec'd 12/28/46.

PETERSON & DUNCAN,
Attorneys for Plaintiff.

[Endorsed]: Filed Dec. 28, 1946.

In the Superior Court of the State of Washington
For Pierce County

No. 99059

HANSEN & ROWLAND CORPORATION, a
Corporation,

Plaintiff,

vs.

THE WESTERN UNION TELEGRAPH COM-
PANY, a Corporation,

Defendant.

CERTIFICATE ON REMOVAL TO
U. S. DISTRICT COURT

State of Washington,
County of Pierce—ss.

I, Josephine R. Melton, County Clerk, and by virtue of the laws of the State of Washington, ex-officio Clerk of the Superior Court of the State of Washington, in and for Pierce County, do hereby certify that I have compared and prepared the foregoing copy of the Summons, Complaint, Motion for Order Fixing Return day on Summons, Order, Motion to Quash Summons, Note for Motion, Brief of Defendant Specially Appearing in Support of Motion to Quash, Note of Issue, Order, Alias Summons, Motion for Order Authorizing Issuance of Alias Summons and Fixing Return Date, Order, Notice of Filing Petition and Bond for Removal;

Proof of Service, Petition for Removal, Alias Summons, Bond on Removal, Order of Removal, Stipulation and Praecipe, to the United States District Court, for the Western District of Washington, Southern Division, at Tacoma, with the originals in the above-entitled action, now on file and of record in this office, and that the same is true and correct copy of the whole and every part of the original record in said action. Also attached are true copies of Exhibits "A," "B," "C," "D," "E" and "F" in the above-entitled cause.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Superior Court, at my office in the City of Tacoma, this 11th day of December, 1946.

[Seal] JOSEPHINE R. MELTON,
County Clerk.

By /s/ A. D. ELDER,
Deputy.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Dec. 28, 1946. Millard P. Thomas, Clerk. By E.R., Deputy.

In the District Court of the United States for the
Western District of Washington, Southern Division

No. 987

HANSEN & ROWLAND CORPORATION, a
Corporation,

Plaintiff,

vs.

THE WESTERN UNION TELEGRAPH COM-
PANY, a Corporation,

Defendant.

MOTION TO REMAND

Now comes plaintiff and moves this court to remand the above-entitled cause to the Superior Court in and for the County of Pierce in the State of Washington on the ground that this court is without jurisdiction to hear and determine the cause, for the reason that as appears from the original complaint herein, the amount in controversy at the time of the commencement of the original action was less than Three Thousand (\$3,000.00) Dollars, exclusive of interest and costs.

This motion is based on the records and files herein.

CHARLES T. PETERSON,
WENDELL W. DUNCAN,
Attorneys for Plaintiff.

[Endorsed]: Filed Jan. 2, 1947.

[Title of District Court and Cause.]

ORDER DENYING PLAINTIFF'S MOTION
TO REMAND AND DEFENDANT'S MO-
TION TO STAY

The above-entitled action having come for hearing before the above-entitled court on the 3rd day of February, 1947, on plaintiff's motion to remand and defendant's motion to stay, and the court having become fully advised;

Now, Therefore, in conformity with oral rulings on said day, it is hereby Ordered that plaintiff's motion to remand be, and the same hereby is, denied, and that defendant's motion to stay be, and the same hereby is, denied, as to which rulings the exceptions of plaintiff and defendant, respectively, are hereby allowed.

Done in open court this 11th day of February, 1947.

CHARLES H. LEAVY,
U. S. District Judge.

Approved as to form:

By WENDELL W. DUNCAN,
Of Attorneys for Plaintiff.

Presented by:

By LANE SUMMERS,
Of Attorneys for Defendant.

[Endorsed]: Filed Feb. 11, 1947.

[Title of District Court and Cause.]

ANSWER

For answer to plaintiff's complaint, the defendant admits, denies and alleges as follows:

I.

The defendant denies each and every allegation contained in paragraph V of said complaint, except as herein expressly admitted.

The defendant admits that it received from the plaintiff notice dated July 24, 1946, a copy of which is attached and made part hereof as Exhibit 1.

II.

The defendant denies each and every allegation contained in paragraph VI of said complaint, except as herein expressly admitted.

The defendant admits that it received from the plaintiff notice dated September 25, 1946, a copy of which is attached and made part hereof as Exhibit 2.

III.

The defendant denies each and every allegation contained in paragraph VII of said complaint, except as herein expressly admitted.

The defendant admits that on October 8, 1946, it orally notified the plaintiff it was unable to vacate the premises on October 31, 1946, whereupon the plaintiff orally advised the defendant that the sum of \$750 per month was a reasonable rental value for said premises; further the defendant admits that

it received letter, a copy of which is attached and made a part hereof as Exhibit 3.

IV.

The defendant denies each and every allegation contained in paragraph VIII of said complaint, except as herein expressly admitted.

The defendant admits that on October 30, 1946, it tendered to the plaintiff as rental of said premises for the month of November, 1946, the sum of \$750, accompanying such tender by letter, a copy of which is attached and made a part hereof as Exhibit 4; further the defendant admits that on said date it notified the plaintiff it was unable to vacate said premises.

V.

The defendant denies each and every allegation contained in paragraph IX of said complaint, except as herein expressly admitted.

The defendant admits that it received notice dated November 2, 1946, a copy of which is attached and made a part hereof as Exhibit 5; further the defendant admits that it has been unable to vacate said premises.

VI.

The defendant denies each and every allegation contained in paragraph X of said complaint, except as herein expressly admitted.

The defendant admits that the principal office of the plaintiff is at Tacoma, Washington.

VII.

The defendant denies each and every allegation in

paragraph XI of said complaint, and particularly denies the plaintiff has been damaged in any sum whatsoever, as alleged or otherwise.

VIII.

The defendant alleges that on and after November 1, 1946, the sum of \$500 per month was and is the reasonable rental value of said premises, and that the sum of \$750 per month was and is excessive of the reasonable rental value of said premises; but that, nevertheless, the defendant on or before the first day of each and every month since the month of October, 1946, has made legal tenders to the plaintiff as and for rental at the rate of \$750 per months, as follows: On October 30, 1946, the sum of \$750 for the month of November, 1946; on November 30, 1946, the sum of \$1500 for the months of November and December, 1946; on December 28, 1946, the sum of \$2250, for the months of November and December, 1946, and the month of January, 1947; and on January 31, 1947, the sum of \$3000 for the months of November and December, 1946, and January and February, 1947—all of which tenders the defendant continues and renews by deposit herewith of said sum of \$3000 in the registry of the above-entitled court for the plaintiff.

IX.

The defendant alleges that for several years last prior to November 1, 1946, the agreed rental for said premises was the sum of \$325 per month, none of which was unpaid or delinquent upon or after said date; that at no time material—neither before

not after the commencement of this action—was rent, either in an agreed amount thereof or the reasonable rental value of said premises, unpaid or delinquent when due; and that the defendant is not indebted to the plaintiff in any amount on any account.

X.

The defendant alleges that at all times material it has been and is engaged in the public service of maintaining in the United States and in foreign countries, by direct ownership and operation and through indirect controls and connections, a world-wide system of communications by telegraph, cable, telephone and radio, of which its facilities installed and used upon the plaintiff's said premises continue to be an integral part and an essential link; that disruption of such service would work incalculable, irreparable damage to the public; that it has been and is burdened with mandatory duty to maintain such service and to avoid such disruption with resulting damage; that for reasons and conditions wholly beyond the defendant's power it has been unable since July 24, 1946, without breach of such duty, to remove its equipment and to vacate said premises, despite definite wish and diligent preparation so to do; and that of such facts the plaintiff has been and is fully aware.

XI.

The defendant alleges that upon its vacation of said premises and before any subsequent occupancy thereof the plaintiff has been and is intending and

planning to remodel the same, for which purpose it applied to the Civilian Production Administration of the United States for permit, which was granted only upon condition (imposed for the protection of the defendant's said service to the public) that the work of remodeling be not commenced before December 1, 1946, to which condition the plaintiff agreed.

XII.

The defendant alleges that the prior unlawfulness, if any, of its possession of said premises was waived by the plaintiff's demand on November 2, 1946, for rent declared by it to have become due and payable on November 1, 1946.

Wherefore, the defendant prays that plaintiff's action be dismissed, and that defendant have such other relief as may be just and proper, together with its costs and disbursements.

MERRITT, SUMMERS &
BUCEY,

LANE SUMMERS,

Attorneys for Defendant.

Copy received Feb. 11, 1947.

PETERSON & DUNCAN,
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 11, 1947.

[Title of District Court and Cause.]

STIPULATION OF FACTS

By and between plaintiff and defendant, in lieu of evidence and as the factual basis for judgment of the above-entitled court in the above-entitled action, it is hereby agreed:

1. That at all times material the plaintiff, a Washington corporation, was the owner of certain premises commonly known as 1007 Pacific Avenue in the City of Tacoma (being Lot 4, Block 1003, of the Map of New Tacoma, W.T.); and at all times material to and including the 31st day of October, 1946, the defendant, a New York corporation, engaged in the service of operating a world-wide system of communications, was the lessee of said premises in lawful possession thereof under valid lease as extended. That said premises were not leased or used for living or residential purposes.

2. That the defendant received from the plaintiff notice dated July 24, 1946, a copy of which is hereunto attached as Exhibit 1.

3. That the defendant received from the plaintiff notice dated September 25, 1946, a copy of which is hereunto attached as Exhibit 2.

4. That on October 8, 1946, the defendant orally notified the plaintiff that it was unable to vacate the premises on October 31, 1946, whereupon the plaintiff orally advised the defendant that the sum of \$750 per month was a reasonable rental value of

said premises. That thereafter the defendant received letter, a copy of which is hereunto attached as Exhibit 3.

5. That on October 30, 1946, the defendant tendered to the plaintiff as rental of said premises for the month of November, 1946, the sum of \$750.00, accompanying such tender by letter, a copy of which is hereunto attached as Exhibit 4. That on October 30, 1946, the defendant notified the plaintiff it was unable to vacate said premises.

6. That the defendant received notice dated November 2, 1946, a copy of which is hereunto attached as Exhibit 5. That the defendant was unable to vacate said premises.

7. That the plaintiff is not engaged in the insurance business in the City of Tacoma or the State of Washington and is not authorized or licensed so to do. That the plaintiff suffered no special damages as alleged by its complaint or otherwise, and is not entitled to recovery thereof.

8. That no rent under lease as extended was due or owing from the defendant to the plaintiff on October 31, 1946, all rent under said lease as extended having been previously paid in full.

9. That on the 30th day of November, 1946, the defendant tendered to the plaintiff the sum of \$1500.00 as rental for the months of November and December, 1946, and accompanied such tender by letter, a copy of which is hereunto attached as Exhibit 6.

That on the 28th day of December, 1946, the defendant tendered to the plaintiff the sum of \$2250.00 as rental for the months of November and December, 1946, and January, 1947, and accompanied such tender by letter, a copy of which is hereunto attached as Exhibit 7.

That on the 31st day of January, 1947, the defendant tendered to the plaintiff the sum of \$3000.00 as rental for the months of November and December, 1946, and January and February, 1947, and accompanied such tender by letter, a copy of which is hereunto attached as Exhibit 8.

That on the 11th day of February, 1947, the defendant filed its answer to the plaintiff's complaint in the above-entitled cause, and contemporaneously therewith deposited in the registry of the above-entitled court, in perpetuation of tenders previously made, the sum of \$3000.00.

That on the 28th day of February, 1947, the defendant tendered to the plaintiff the sum of \$750 as rental for the month of March, 1947, accompanied by letter, a copy of which is hereunto attached as Exhibit 9; that thereafter on said date the defendant deposited said sum of \$750 in the registry of the above-entitled court in perpetuation of such tender.

10. That at all times material on and after the first day of November, 1946, the reasonable rental value of said premises was the sum of \$750 per month.

11. That on the 7th day of March, 1947, said premises were completely vacated by the defendant and possession thereof entirely surrendered to the plaintiff.

Dated this 6th day of May, 1947.

CHARLES T. PETERSON,
WENDELL W. DUNCAN,
Attorneys for Plaintiff.

MERRITT, SUMMERS &
BUCEY,
LANE SUMMERS.
Attorneys for Defendant.

EXHIBIT 1

[Letterhead Hansen & Rowland, Inc.]

Tacoma, Washington, July 24, 1946

The Western Union Telegraph Company, Executive
Offices, 60 Hudson Street, New York, N. Y.

Gentlemen:

Reference is hereby made to that certain written lease dated December 2, 1932, between Premier Investment Company, party of the first part, and The Western Union Telegraph Company, party of the second part, and pertaining to certain premises at 1007 Pacific Avenue in the City of Tacoma, Washington, as in said lease more fully described, and which said lease was for the term commencing November 1, 1932, and terminating on October 31, 1938, and which said was thereafter by a written

agreement between Western Union Realty Corporation (successor in interest to Premier Investment Company) and The Western Union Telegraph Company renewed and extended for a further period of three years from the first day of November, 1938, to October 31, 1941, and again thereafter by written instrument dated February 27, 1941, between the said parties renewed and extended for an additional period of five years from the first day of November, 1941, and ending October 31, 1946.

The undersigned, Hansen & Rowland Corporation, present owner of said leased premises and the successor in interest to said Western Union Realty Corporation in said above described lease, being desirous of terminating said lease at the end of its said term as above described, does now hereby pursuant to the provisions of said lease notify you of its desire and intent to so terminate said lease at the end of its said term, to-wit, October 31, 1946.

A signed duplicate of this notice is being forwarded to the office of the District Superintendent at Portland, Oregon.

Very truly yours,

HANSEN & ROWLAND
CORPORATION,

By H. T. HANSEN,
President.

HTH:ft

CC The Western Union Telegraph Company Attention: Mr. R. H. Cobb, District Superintendent, 239 Southwest Broadway, Portland Oregon.

EXHIBIT 2

NOTICE

To:

Western Union Telegraph Company
Tenants in possession of premises at
1007 Pacific Avenue
Tacoma, Washington

Please Take Notice that the undersigned owner of the following described real property in Pierce County, Washington, to-wit:

Lot Four (4) in Block One Thousand Three (1003) Map of New Tacoma, W.T., in Pierce County, Washington,

commonly known as House No. 1007 Pacific Avenue in the City of Tacoma, Washington, hereby notifies you that you are hereby required to quit and surrender up to the undersigned owner entitled thereto the possession of the above-entitled premises now occupied by you as tenant, at the expiration of your tenancy on the first day of November, 1946.

Dated at Tacoma, Washington, September 25th, 1946.

HANSEN & ROWLAND
CORPORATION,

By CHARLES T. PETERSON,
Agent and Attorney.

EXHIBIT 3

Tacoma, Washington

October 8, 1946

Western Union Telegraph Company

1007 Pacific Avenue

Tacoma, Washington

Attention: Mr. R. H. Cobb.

Gentlemen:

Referring to your continuing in possession of the premises at 1007 Pacific Avenue, Tacoma, Washington, after October 31st, 1946, please be advised that you may continue such possession for a period not exceeding four months after the expiration of the present lease on the following terms and conditions.

You are to pay, in advance, rental at the rate of \$1500 per month, monthly; however, you shall have the option and privilege of vacating and surrendering up the premises at any time during the month, providing you give the owners ten days' written notice of your intention and desire so to do, and upon vacating, the unearned portion of any month's rental will be refunded to you.

Conditions of space in the City of Tacoma are such that it was necessary for the owners to move one of the departments of their business to Seattle pending the time they can get possession of said premises. They regard the premises as having a reasonable rental value of \$750.00 per month and

the moving of this department to Seattle so that it may be kept intact, and employing of additional help incident to having one branch of their business done in Seattle, will cost at least \$750.00 per month, and undoubtedly, considering the cost of moving, more than that amount.

If you desire to avail yourself of this proposal, you may do so by endorsing your acceptance hereon and returning same to writer.

HANSEN & ROWLAND, INC.,

By CHARLES T. PETERSON,

Agent and Attorney.

We hereby accept and agree to the foregoing:

WESTERN UNION TELE-
GRAPH COMPANY,

By

EXHIBIT 4

Oct. 30, 1946

Hansen & Rowland Corporation

Hansen & Rowland, Inc.

Tacoma, Washington

Gentlemen:

Re: 1007 Pacific Avenue—Western Union
Telegraph Company office space

Herewith is tendered the sum of Seven Hundred and Fifty Dollars in U. S. currency, covering rental

for the month of November, 1946—that amount having been claimed and demanded by your letter of October 8, 1946, as the reasonable monthly rental value of the space above mentioned, which this company is compelled by circumstances to occupy until vacation is possible.

Yours very truly,

WESTERN UNION TELE-
GRAPH COMPANY,

By MERRITT, SUMMERS &
BUCEY,

LS/ley

Its Attorneys.

EXHIBIT 5

NOTICE

To: Western Union Telegraph Company, Tenants
in possession of premises at 1007 Pacific Avenue
Tacoma, Washington

Please take notice that you are hereby required to pay the rental of \$1500.00, which became due and payable on the 1st day of November, 1946, as rental for the premises now occupied by you, to-wit:

Lot Four (4) in Block One Thousand Three
(1003) Map of New Tacoma, W.T., in Pierce
County, Washington,

commonly known as house No. 1007 Pacific Avenue
in the City of Tacoma, Washington, within three
days following the date of service of this notice, or

in the alternative, to quit, vacate and surrender up to the undersigned owners thereof possession of said premises.

Please govern yourself accordingly.

Dated at Tacoma, Washington, November 2, 1946.

HANSEN & ROWLAND
CORPORATION,
By CHARLES T. PETERSON,
Its Agent and Attorney.

EXHIBIT 6

Nov. 30, 1946

Hansen & Rowland Corporation, C/o Peterson &
Duncan, Attorneys, 520 Perkins Building,
Tacoma, Washington

Gentlemen:

Re: 1007 Pacific Avenue—office space

Herewith is tendered the sum of \$1500 in United States currency covering office space rental for the months of November and December, 1946, at the rate of \$750 per month, claimed by you as the reasonable rental value thereof according to your letter of October 8, 1946.

Very truly yours,

THE WESTERN UNION
TELEGRAPH COMPANY,
By MERRITT, SUMMERS &
BUCEY,

LS/KT

As Its Attorneys.

EXHIBIT 7

Dec. 28, 1946

Hansen & Rowland Corporation
C/o Peterson & Duncan, Attorneys,
520 Perkins Building
Tacoma, Washington

Gentlemen:

Re: 1007 Pacific Avenue—office space

Herewith is tendered the sum of \$2250.00 in United States currency covering office space rental for the months of November and December, 1946, and January, 1947, at the rate of \$750 per month, claimed by you as the reasonable rental value thereof according to your letter of October 8, 1946.

Very truly yours,

THE WESTERN UNION
TELEGRAPH COMPANY,

By MERRITT, SUMMERS &
BUCEY,

As Its Attorneys.

LS/KT

EXHIBIT 8

Jan. 30 1947

Hansen & Rowland Corporation,
C/o Peterson & Duncan, Attorneys
520 Perkins Building,
Tacoma, Washington

Gentlemen :

Re: 1007 Pacific Avenue—office space

Herewith is tendered the sum of \$3000.00 in United States currency covering office space rental for the months of November and December, 1946, and January and February, 1947, at the rate of \$750 per month, claimed by you as the reasonable rental value thereof according to your letter of October 8, 1946.

Very truly yours,

THE WESTERN UNION
TELEGRAPH COMPANY,

By MERRITT, SUMMERS &
BUCEY,

As Its Attorneys.

LS/KT

EXHIBIT 9

Feb. 28, 1947

Hansen & Rowland Corporation,
C/o Peterson & Duncan, Attorneys
520 Perkins Bldg.
Tacoma, Washington

Gentlemen:

Re: 1007 Pacific Avenue—office space

Herewith is tendered the sum of \$750.00 in United States currency covering office space rental for the month of March, 1947, at the rate of \$750 per month, claimed by you as the reasonable rental value thereof according to your letter of October 8, 1946.

Very truly yours,

THE WESTERN UNION
TELEGRAPH COMPANY,

By MERRITT, SUMMERS &
BUCEY,

As Its Attorneys.

LS/KT

[Endorsed]: Filed May 6, 1947.

[Title of District Court and Cause.]

DEFENDANT'S DISAPPROVAL OF AND OBJECTIONS TO PROPOSED FINDINGS OF FACT.

The defendant disapproves of findings as proposed by the plaintiff because they are not completely in harmony with the undenied allegations of the pleadings and the stipulation of facts; and in addition defendant specifically objects to such proposed findings of fact as follows:

1. Because no proposed finding is based upon paragraph 3 of the stipulation of facts and upon Exhibit 2 attached thereto.

2. Because proposed finding number 4 does not adhere to paragraph 4 of the stipulation of facts, and does not incorporate all of the plaintiff's letter of October 8, 1946, attached thereto as Exhibit 3.

3. Because proposed finding number 6 does not adhere to paragraph 5 of the stipulation of facts, does not incorporate all of the defendant's letter of October 30, 1946, attached thereto as Exhibit 4, and does not find that the plaintiff was then notified by the defendant it was unable to vacate said premises.

4. Because proposed finding number 7 does not adhere to paragraph 6 of the stipulation of facts, does not incorporate all of plaintiff's notice of November 2, 1946, attached thereto as Exhibit 5, and

does not find that the defendant was unable to vacate said premises; and because proposed finding number 7 contains recital in the nature of a conclusion of law.

5. Because proposed finding number 8 is contrary to facts as stipulated to the extent of \$750.

6. Because proposed finding number 9 is contrary to the ruling of this court as to the date of the commencement of plaintiff's action, and is contrary to the allegations and prayer of the plaintiff's complaint; and because proposed finding number 9 is unnecessary, since the record speaks for itself.

7. Because proposed finding number 10 does not adhere to paragraph 9 of the stipulation of facts, and does not incorporate the defendant's letters of tender attached thereto as Exhibits 6, 7, 8 and 9.

8. Because no proposed finding is based upon paragraph 7 of the stipulation of facts.

9. Because no proposed finding is based upon paragraph 8 of the stipulation of facts.

MERRITT, SUMMERS &

BUCEY,

LANE SUMMERS,

Attorneys for Defendant.

[Endorsed]: Filed May 27, 1947.

[Title of District Court and Cause.]

DEFENDANT'S DISAPPROVAL OF AND OB-
JECTIONS TO PROPOSED CONCLU-
SIONS OF LAW.

Defendant disapproves of conclusions of law as proposed by the plaintiff and objects specifically thereto as follows:

1. Because proposed conclusion number 1 is contrary to and unsupported by the stipulation of facts and is unwarranted in law.

2. Because proposed conclusion number 3 is contrary to and unsupported by the stipulation of facts and is unwarranted in law.

MERRITT, SUMMERS &
BUCEY,

LANE SUMMERS,

Attorneys for Defendant.

[Endorsed]: Filed May 27, 1947.

[Title of District Court and Cause.]

DEFENDANT'S DISAPPROVAL OF AND
OBJECTIONS TO PROPOSED JUDGMENT

The defendant disapproves of judgment as proposed by the plaintiff and objects thereto because said proposed judgment is contrary to and unsupported by the undenied allegations of the pleadings,

the stipulation of facts, and the law applicable thereto.

MERRITT, SUMMERS &
BUCEY,

LANE SUMMERS,

Attorneys for Defendant.

[Endorsed]: Filed May 27, 1947.

[Title of District Court and Cause.]

FINDINGS OF FACT AS PROPOSED BY
DEFENDANT (REFUSED)

This action having regularly come to trial on the 19th day of May, 1947, before the above entitled court, the undersigned judge presiding, without a jury, and the plaintiff appearing by Charles T. Peterson of Peterson & Duncan, its attorneys, the defendant appearing by Lane Summers of Merritt, Summers & Bucey, its attorneys, stipulation of facts in lieu of evidence as factual basis for judgment having been signed by the plaintiff and the defendant, having been filed, and having been considered by the court, argument having been heard, and the court having become fully advised,

Hereby makes Findings of Fact by adopting as such said stipulation of facts; and

Hereby draws Conclusions of Law as follows:

1. That the plaintiff by its notice dated November 2nd, 1946 (Exhibit 5), operating retroactively,

elected to treat the defendant not as a trespasser but as a tenant on and after November 1st, 1946, when, in the absence of agreement between the plaintiff and the defendant as to the rate of rent, the defendant occupied the premises as a tenant by sufferance.

2. That the defendant having made timely tenders to the plaintiff and deposits in court of the reasonable rental value of the premises at the rate of \$750 per month from November 1, 1946, to March 7, 1947, both inclusive, in the total sum of \$3175, has satisfied its obligation to the plaintiff.

3. That the defendant is not guilty of unlawful detainer and hence is not liable for statutory penalty.

4. That the defendant is entitled to judgment awarding from deposit in court in the total sum of \$3750, to the plaintiff the sum of \$3175, and to the defendant the sum of \$575.

Dated this day of, 1947.

U. S. District Judge.

Presented by:

Of Counsel for Defendant.

[Endorsed]: Filed June 2, 1947.

In the United States District Court for the Western
District of Washington, Southern Division

No. 987

HANSEN & ROWLAND CORPORATION,
a corporation,

Plaintiff,

vs.

THE WESTERN UNION TELEGRAPH
COMPANY,

Defendant.

JUDGMENT AS PROPOSED BY
DEFENDANT (REFUSED)

This action having regularly come to trial on the 19th day of May, 1947, before the above entitled court, the undersigned judge presiding, without a jury, the plaintiff appearing by Charles T. Peterson of Peterson & Duncan, its attorneys, the defendant appearing by Lane Summers of Merritt, Summers & Bucey, its attorneys, stipulation of facts in lieu of evidence as factual basis for judgment having been signed by the plaintiff and the defendant, having been filed, and having been considered by the court, together with argument of counsel, and the court being fully advised;

Now, Therefore, based on findings of fact and conclusions of law heretofore made and drawn this day, it is hereby Ordered, Considered and Adjudged

that from deposit in the registry of the court in the above entitled cause in the total sum of \$3750, the Clerk make payments as follows: to the plaintiff the sum of \$3175, and to the defendant the sum of \$575; and that the defendant have its costs and disbursements herein to be taxed.

Done in open court this day of,
1947.

U. S. District Judge.

Presented by:

Of counsel for Defendant.

[Endorsed]: Filed June 2, 1947.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter coming on regularly for trial on the 19th day of May, 1947, before the above entitled court, sitting without a jury, the plaintiff appearing by Charles T. Peterson of Peterson & Duncan, its attorneys, defendant appearing by Lane Summers of Merritt, Summers & Bucey, attorneys for defendant. The plaintiff and defendant having entered into a stipulation of facts in lieu of evidence as the factual basis for judgment of the court, which stipulation was duly filed herein, and the court having considered said stipulation of facts, and

after hearing argument of counsel, and being fully advised in the premises announced that it would find in favor of plaintiff and against defendant, and in accordance therewith the court doth now make the following

Findings of Fact

1. That at all times material the plaintiff, a Washington corporation, was the owner of certain premises commonly known as 1007 Pacific Avenue in the City of Tacoma (being Lot 4, Block 1003, of the Map of New Tacoma, W. T.); and at all times material to and including the 31st day of October, 1946, the defendant, a New York corporation engaged in the service of operating a world-wide system of communications, was the lessee of said premises in lawful possession thereof under valid lease as extended, which said lease was made December 2, 1932, by plaintiff's predecessor in interest for a period of five years and was renewed on an annual basis, the last of which renewals expired on the 31st day of October, 1946.

2. That said premises were not leased or used for living or residential purposes.

3. That said original lease, as extended, provided that either party thereto shall give to the other, at least three months before the end of any term, notice of its desire and intent to terminate said lease at the end of said term. That accordingly on July 24, 1946, plaintiff gave defendant written notice of its desire to terminate said lease at the end of the current term which expired on October 31, 1946.

4. That on October 8, 1946, defendant orally notified plaintiff that it was unable to vacate said premises on October 31, 1946; whereupon plaintiff notified defendant orally and in writing that it would be permitted to continue in possession of said premises for a period not exceeding four months after the expiration of said term, providing defendant paid an advance rental for said premises at the rate of \$1500.00 monthly, with the option and privilege on the part of defendant to vacate and surrender up said premises at any time during the month, providing defendant gave plaintiff ten days written notice of its intention and desire so to do, in which event the unearned portion of any month's rental would be refunded by plaintiff to defendant; and in said written proposal requested defendant if it desired to avail itself of said proposal to do so by endorsing its acceptance thereon and returning the same to plaintiff's agent and attorney.

5. The defendant did not endorse its acceptance on said proposal nor return the same so endorsed to plaintiff's attorney.

6. That on October 30, 1946, defendant tendered to plaintiff the sum of \$750.00 as the reasonable rental value of said premises, which tender was accompanied by a letter in writing, which tender plaintiff refused.

7. That on November 2, 1946, plaintiff caused a notice in writing to be served on defendant, by the terms of which notice defendant was required to pay the rental of \$1500.00, which plaintiff stated became due and payable on November 1, 1946, as rental for said premises within three days following the date of service of said notice, or in the alternative to quit, vacate and surrender up to the owner the possession of said premises.

8. That defendant failed to pay said requested rental of \$1500.00 within said three days, or at all, and continued in the possession of said premises.

9. That on November 9, 1946, plaintiff brought this action to recover the possession of said premises and to oust defendant therefrom, and for damages and penalty for the unlawful detainer of said premises.

10. That defendant timely tendered the sum of \$750.00 to plaintiff as the reasonable rental for said premises for the months of November, December, January, February and March, accompanying the tender in each instance by a written letter, which tenders plaintiff refused, whereupon defendant paid same into the registry of this court.

11. That at all times material on and after the 1st day of November, 1946, the reasonable rental value of said premises so occupied and detained by defendant was \$750.00 per month.

12. That on the 7th day of March, 1947, defendant vacated and surrendered up possession of said premises to plaintiff.

From the foregoing Findings of Fact the court makes the following

Conclusions of Law

1. That defendant wrongfully held and detained the possession of said premises and every part thereof from plaintiff at all times from and including the 1st day of November, 1946, to and including the 7th day of March, 1946.

2. That the reasonable rental value of said premises for said period was \$750.00 per month, or a total of \$3175.00.

3. That by reason of defendant's wrongful detainer of said premises during said period, plaintiff is entitled to a judgment in double the amount of the reasonable rental of said premises during said period, to wit, judgment in the amount of \$6,350.00, together with costs of suit. Let judgment be entered accordingly.

Dated this 2nd day of June, 1947.

Exceptions allowed to the defendants. (C. H. L.)

CHARLES H. LEAVY,

United States District Judge.

Presented by:

Of Counsel for Plaintiff.

[Endorsed]: Filed June 2, 1946.

In the United States District Court for the Western
District of Washington, Southern Division

No. 987

HANSEN & ROWLAND CORPORATION

a corporation,

Plaintiff,

vs.

THE WESTERN UNION TELEGRAPH COM-
PANY, a corporation,

Defendant.

JUDGMENT

This matter coming on regularly for trial on the 19th day of May, 1947, before the above entitled court, sitting without a jury, the plaintiff appearing by Charles T. Peterson of Peterson & Duncan, its attorneys, defendant appearing by Lane Summers of Merritt. Summers & Bucey, attorneys for defendant. The plaintiff and defendant having entered into a stipulation of facts in lieu of evidence as the factual basis for judgment of the court, which stipulation was duly filed herein, and the court having considered said stipulation of facts, and after hearing argument of counsel, and being fully advised in the premises announced that it would find in favor of plaintiff and against defendant, and having made its Findings of Fact and Conclusions of Law herein in writing, wherein and whereby it found, all and singular the facts, it is now, in accordance therewith,

Ordered, Adjudged and Decreed that plaintiff, Hansen & Rowland Corporation, a Washington corporation, do have and recover of and from the Western Union Telegraph Company, a corporation, defendant herein, a New York corporation, the sum of \$6,350.00, with interest thereon from date hereof, together with costs of suit to be taxed. Exceptions allowed defendants. (C. H. L.)

Dated June 2nd, 1947.

CHARLES. H. LEAVY,
United States District Judge.

Presented by:

Of Counsel for Plaintiff.

[Endorsed]: Filed June 2, 1947.

[Title of District Court and Cause.]

DEFENDANT'S EXCEPTIONS TO FINDINGS, CONCLUSIONS AND JUDGMENT

Findings of fact, conclusions of law and judgment, as proposed by the plaintiff, having been signed and entered by the above entitled court on the 2nd day of June, 1947, in the absence of attorneys for either the plaintiff or the defendant, now the defendant excepts to said findings, conclusions and judgment in the above entitled cause for the reasons heretofore assigned by defendant's disapproval of and objections to the same, and for the reason that said findings, conclusions and judgment are contrary to the undisputed facts and the applicable law in the above entitled action.

Dated this 3rd day of June, 1947.

MERRITT, SUMMERS &
BUCEY,
LANE SUMMERS,
Attorneys for Defendant.

Copy received June 4, 1947.

PETERSON & DUNCAN,
Attorneys for Plaintiff.

[Endorsed]: Filed June 4, 1947.

[Title of District Court and Cause.]

STIPULATION

Whereas, judgment was entered by the above entitled court in the above entitled action on the 2nd day of June, 1947, in favor of the plaintiff and against the defendant in the amount of \$6350.00, together with costs;

Whereas, defendant intends to appeal from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit;

Whereas, the defendant concedes it is indebted to the plaintiff in the sum of \$3175.00 but not in any greater amount, which sum has been paid by it into the registry of the court; and

Whereas, it is the desire of both the plaintiff and the defendant to minimize the amount of supersedeas bond;

Now, Therefore, the plaintiff and the defendant agree:

1. That the sum of \$3175.00 heretofore paid by the defendant into the registry of the court may, without prejudice to the rights of either party on said appeal, be forthwith paid to the plaintiff.

2. That on said appeal supersedeas bond in the sum of \$4000.00 shall be sufficient as to amount.

3. That if said judgment of the above entitled court is affirmed on said appeal, said sum of \$3175.00 so paid shall be regarded as partial satisfaction of final judgment in the above entitled cause, and shall not bear interest.

4. That if said judgment of the above entitled court is reversed or modified on said appeal, said

sum of \$3175.00 so paid shall be taken into account in adjustment thereunder of the rights of plaintiff and defendant.

5. That this stipulation and any order of the court entered in pursuance hereof shall in no wise affect or prejudice the rights of either plaintiff or defendant on said appeal, and the rights of the plaintiff and defendant with respect to said appeal shall in all particulars be preserved as fully and for all purposes as though this stipulation were never made nor any order entered by the above entitled court in pursuance thereof.

Dated this 10th day of June, 1947.

PETERSON & DUNCAN,
Attorneys for Plaintiff.

MERRITT, SUMMERS &
BUCEY,
Attorneys for Defendant.

[Endorsed]: Filed June 11, 1947.

[Title of District Court and Cause.]

ORDER ALLOWING WITHDRAWAL OF
FUNDS IN REGISTRY OF COURT

Plaintiff and defendant having filed stipulation from which it appears that defendant intends to prosecute an appeal from the judgment of the above entitled court, entered in the above entitled action on the 2nd day of June, 1947, in favor of the plaintiff and against the defendant in the amount of \$6350.00, together with costs, by which stipulation it is agreed that the sum of \$3175.00,

but no more, heretofore deposited in the registry of the court, may be withdrawn by and paid to the plaintiff in minimization of supersedeas bond to be filed by the defendant on said appeal, such withdrawal and payment to be without prejudice to the rights of either plaintiff or defendant on said appeal;

Now, Therefore, it is hereby Ordered that the Clerk of the above entitled court is authorized and directed forthwith to pay said sum of \$3175.00 to the plaintiff, Hansen and Rowland Corporation, or its attorneys, Peterson & Duncan, and that such payment shall not affect or prejudice the rights of either the plaintiff or the defendant with respect to said appeal.

Dated this 11th day of June, 1947.

CHARLES H. LEAVY,
United States District Judge.

Approved by:

LANE SUMMERS,
Of Attorneys for Defendant.

Presented by:

PETERSON & DUNCAN,
Of Attorneys for Plaintiff.

Received this 16th day of June, 1947, check of Treasurer of the United States #5,480, in the sum of \$3,175.00.

PETERSON & DUNCAN,
Attorneys for Plaintiff,
By W. W. DUNCAN.

[Endorsed]: Filed June 11, 1947.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the above entitled Court, to Hansen & Rowland Corporation, Plaintiff above named; and to Peterson & Duncan, its attorneys:

Notice is given that The Western Union Telegraph Company, the defendant above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from that certain judgment entered upon the 2nd day of June, 1947, in favor of said plaintiff against said defendant in the above entitled action by the above entitled court.

Dated this 10th day of June, 1947.

MERRITT, SUMMERS &
BUCEY,

LANE SUMMERS,
Attorneys for Defendant.

Copy received June 11, 1947.

PETERSON & DUNCAN,
Attorneys for Plaintiff.

Copy of the within and foregoing Notice of Appeal mailed to Messrs. Peterson & Duncan, attorneys for Plaintiff, at Perkins Building, Tacoma, Washington, this 12th day of June, 1947.

E. E. REDMAYNE,
Deputy Clerk.

[Endorsed]: Filed June 11, 1947.

[Title of District Court and Cause.]

SUPERSEDEAS BOND ON APPEAL

Know All Persons By These Presents:

That The Western Union Telegraph Company, as Principal, and Fidelity and Deposit Company of Maryland, a corporation authorized to do business within the State of Washington, as Surety, are held and firmly bound unto Hansen & Rowland Corporation, in the full sum of Four Thousand Dollars (\$4000.00) for the payment of which well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents.

Whereas, in the above entitled action judgment was rendered in favor of Hansen & Rowland Corporation against The Western Union Telegraph Company for the sum of \$6350.00, plus interest and costs, from which judgment The Western Union Telegraph Company is appealing to the United States Circuit Court of Appeals for the Ninth Circuit in the time and manner provided by law, pending which appeal it desires to stay and supersede said judgment until determination thereof by said appellate court;

Now, Therefore, the condition of the foregoing bond is such that if The Western Union Telegraph Company as such Principal shall prosecute its appeal to effect, shall satisfy in full said judgment (or any modification thereof by said appellate court), together with all costs, interest and damages for delay if for any reason said appeal be dismissed or

said judgment be affirmed or modified, and also shall satisfy in full all costs, interest and any damages awarded against it by said appellate court, then this bond shall be void; otherwise it shall continue in full force and effect.

Dated this 10th day of June, 1947, at Seattle, Washington.

(Principal)
THE WESTERN UNION
TELEGRAPH COMPANY,
By MERRITT, SUMMERS &
BUCEY,
Its Attorneys.

(Surety)
FIDELITY AND DEPOSIT
COMPANY OF MARYLAND.

[Seal] /s/ By S. W. HOLBROOK,
Attorney-in-Fact.

The foregoing bond is hereby approved as to form, amount and surety.

PETERSON & DUNCAN,
Attorneys for Plaintiff.

The foregoing bond is hereby approved, and stay of proceedings upon judgment of the above entitled court pending the appellate court's determination of appeal therefrom is hereby granted.

Done in open court this 12th day of June, 1947.

CHARLES H. LEAVY,
United States District Judge.

[Endorsed]: Filed June 11, 1947.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 987

THE WESTERN UNION TELEGRAPH
COMPANY, a corporation,

Appellant,

vs.

HANSEN & ROWLAND CORPORATION,
a corporation,

Appellee.

STIPULATION AS TO RECORD

In substitution for appellant's designation of a portion of the record and for the elimination of all unessential material, by appellant above named and appellee above named it is hereby stipulated:

(A) That the record on appeal in the above entitled action shall include the following:

- (1) Complaint with Exhibit F only;
- (2) Original summons, returnable November 18, 1946;
- (3) Motion to quash summons;
- (4) Alias summons, returnable November 30, 1946;
- (5) Petition for removal;
- (6) Bond on removal;
- (7) Notice of filing petition and bond on removal; proof of service;
- (8) Order of removal;
- (9) Notice of removal;

- (10) Clerk's certificate on removal;
- (11) Motion to remand;
- (12) Order denying motion to remand;
- (13) Answer to complaint, with no exhibits;
- (14) Stipulation of facts, with all exhibits;
- (15) Defendant's disapproval of and objections to proposed findings of fact;
- (16) Defendant's disapproval of and objections to proposed conclusions of law;
- (17) Defendant's disapproval of and objections to proposed judgment;
- (18) Findings of fact and conclusions of law as proposed by defendant and refused by the court;
- (19) Judgment as proposed by the defendant and refused by the court;
- (20) Findings of fact and conclusions of law as signed by the court on June 2, 1947;
- (21) Judgment as signed by the court on June 2nd, 1947;
- (22) Defendant's exceptions to findings, conclusions and judgment as signed and entered on June 2nd, 1947;
- (23) Stipulation as to withdrawal of funds;
- (24) Order of court allowing withdrawal of funds;
- (25) Notice of appeal;
- (26) Bond on appeal;
- (27) This stipulation;
- (28) Appellant's statement of points;
- (29) Appropriate notation of service and filing dates.

(B) That the record on appeal in the above entitled action shall exclude the following:

(1) All portions of the record not listed above.

Dated this 30th day of June, 1947.

MERRITT, SUMMERS &
BUCEY,
LANE SUMMERS,
Attorneys for Appellant.

PETERSON & DUNCAN,
/s/ WENDELL W. DUNCAN,
Attorneys for Appellee.

To the Clerk of the United States District Court for
the Western District of Washington, Southern
Division:

You will please prepare and certify record on
appeal in the above entitled action in harmony with
the foregoing stipulation relative thereto.

Dated this 30th day of June, 1947.

MERRITT, SUMMERS &
BUCEY,
LANE SUMMERS,
Attorneys for Appellant.

[Endorsed]: Filed U. S. D. C. June 30, 1947.

[Title of Circuit Court of Appeals and Cause.]

APPELLANT'S STATEMENT OF POINTS

The Western Union Telegraph Company, appellant above named, upon its appeal in the above entitled action relies upon the following points:

(1) Error by the District Court in refusing findings of fact as proposed by the defendant;

(2) Error by the District Court in refusing conclusions of law as proposed by the defendant;

(3) Error by the District Court in refusing judgment as proposed by the defendant;

(4) Error by the District Court in disregarding defendant's disapproval of and objections to findings, conclusions and judgment as proposed by the plaintiff;

(5) Error by the District Court in making findings, drawing conclusions and allowing judgment as signed and filed by the court on June 2nd, 1947;

(6) Error by the District Court in finding and concluding that the defendant was guilty of unlawful detainer under the statutes of the State of Washington;

(7) Error by the District Court in granting judgment against the defendant for unlawful detainer penalty under the statutes of the State of Washington;

(8) Error by the District Court in failing to exonerate the defendant from all obligations to the

plaintiff in excess of the sum of \$3175.00 on deposit in the registry of the court.

Dated this 30th of June, 1947.

MERRITT, SUMMERS &
BUCEY,
LANE SUMMERS,
Attorneys for Appellant.

Copy received June 30th, 1947.

PETERSON & DUNCAN,
Attorneys for Appellee.

[Endorsed]: Filed U. S. D. C. June 30, 1947.

In the United States District Court for the Western
District of Washington, Southern Division
Civil No. 987

HANSEN & ROWLAND CORPORATION,
a corporation,

Plaintiff,

vs.

THE WESTERN UNION TELEGRAPH
COMPANY, a corporation,

Defendant.

United States of America,
Western District of Washington—ss.

CLERK'S CERTIFICATE TO RECORD
ON APPEAL

I, Millard P. Thomas, Clerk of the United States
District Court for the Western District of Wash-

ington, do hereby certify that the foregoing Transcript of the Record, consisting of pages numbered 1 to 71, inclusive, is a full, true and correct copy of so much of the papers and proceedings in the above entitled cause as required by Stipulation as to the Record and Praeipie to the Clerk, signed and filed on June 30, 1947, on file and of record in my office at Tacoma, Washington, and the same constitutes the Transcript of the Record on Appeal from the Judgment of the District Court of the United States for the Western District of Washington, Southern Division, to the United States Circuit Court of Appeals for the Ninth Circuit.

I do further certify that the following is a full, true and correct statement of all expenses, fees and charges earned by me in the preparation and certification of the aforesaid Transcript of the Record on Appeal, to-wit:

Appeal fee	\$ 5.00
Clerk's fee for comparing and certifying	
Record on Appeal.....	7.10
	<hr/>
	\$12.10

and I further certify that the said fees, as above set out, have been paid in full by the Appellant herein.

In Testimony Whereof I have hereunto set my hand and affixed the seal of said Court, in the City of Tacoma, Washington, this 12th day of July, 1947.

[Seal]

MILLARD P. THOMAS,
Clerk.

By /s/ E. E. REDMAYNE,
Deputy.

[Endorsed]: No. 11689. United States Circuit Court of Appeals for the Ninth Circuit. Western Union Telegraph Company, a corporation, Appellant, vs. Hansen & Rowland Corporation, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Southern Division.

Filed July 16, 1947.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.